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TRANSCRIPT OF RECORD

(Pages 481 to 984)

Supreme Court of the United States

OCTOBER TERM, 1948

No. 228

NYE & NISSEN (A CORPORATION), AND ABRAHAM MONCHARSH, PETITIONERS,

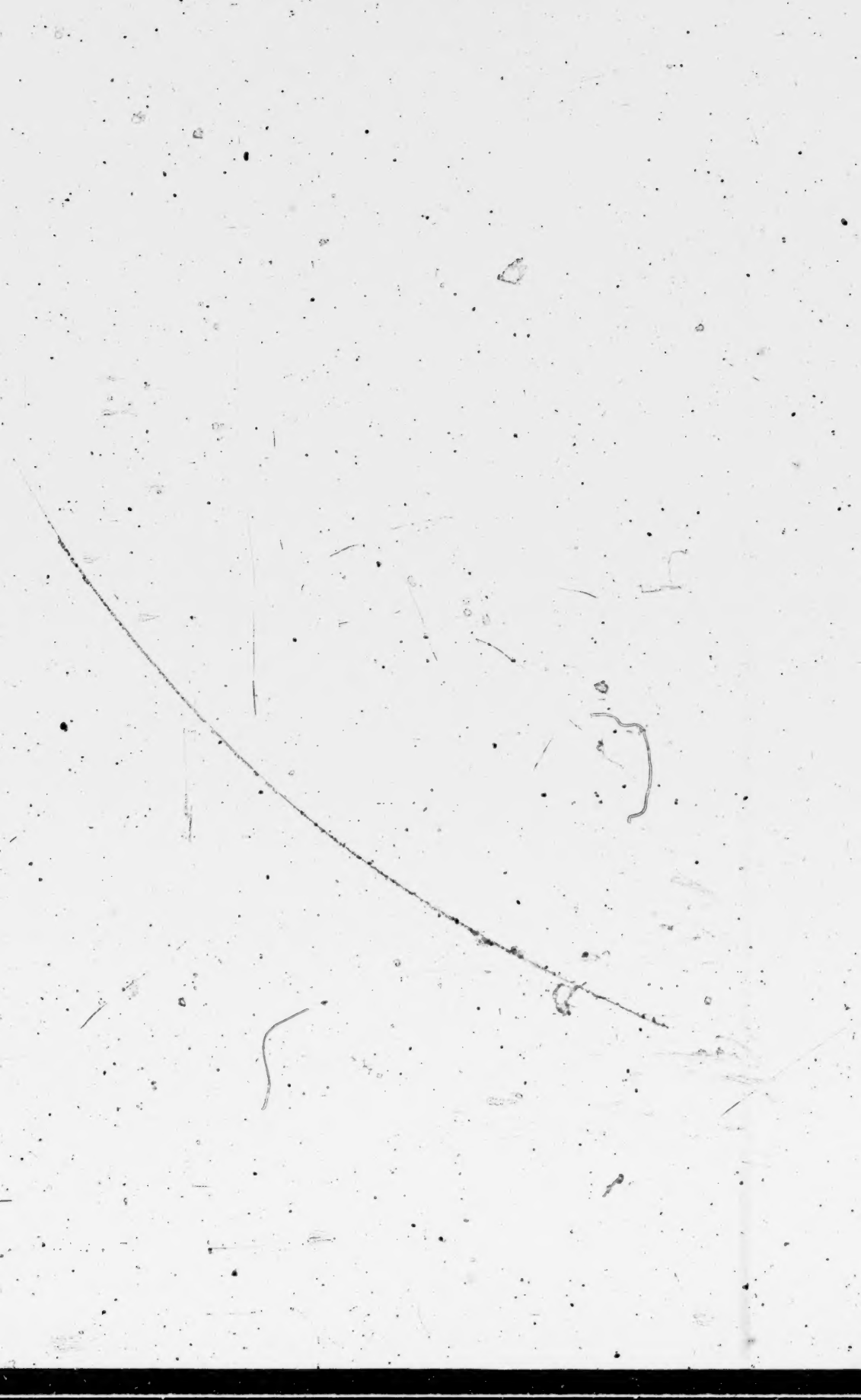
vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 17, 1948.

CERTIORARI GRANTED OCTOBER 25, 1948.



No. 11308

United States

Circuit Court of Appeals

For the Ninth Circuit.

NYE & NISSEN, a Corporation, and ABRAHAM MONCHARSH,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Ten Volumes

VOLUME II

Pages 481 to 984

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

'Rotary Colorprint, 661 Howard Street, San Francisco

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: The record shows—we checked on it at the recess—the record shows the testimony the witness was giving at the time of adjournment concerning the conversation with Mr. Moncharsh was in the summer of 1942.

Mr. Pratt: That was my recollection.

The Court: That is my recollection.

Mr. Faulkner: Now it is 1941.

The Court: Nothing before me now. Proceed.

Mr. Hippeli: Q. Directing your attention to the specific delivery in December, 1942, about which you were talking this morning, I will ask you——

Mr. Faulkner: You say December of 1942. There was no mention.——

Mr. Hippeli: The summer of 1942.

Q. Do you recall the date of the delivery about which you were talking this morning?

A. You say—I thought it was 1941, but you said I said 1942. You know, in these years, all during the nine years I was there things happened so often, if you say how often didn't we do a certain thing it would [335] be easier for me, but when we do the same thing every day——

The Court: Well, just answer the question.

A. I will give my opinion of the year——

The Court: You can't give your opinion. The only thing you should do, if you don't remember say so; if you do, give the date and the time and the place and persons present as best you can.

Mr. Hippeli: I believe the witness fixed the time as best he could this morning.

The Court: If there is any question fix it again.

(Testimony of Henry Lester Pineda.)

Mr. Hippeli: Q. Will you fix the time of the particular order that you were talking about this morning?

A. I would say it was around 1941, because we moved from the plant in 1942.

Q. Was it before you moved from the plant?

A. Yes.

Q. Was it in the summer of the year 1941?

A. I would say 1941.

Q. What part of the year, do you recall?

A. Well, usually we were busy around the summer of the year, in June, around there.

Q. To the best of your recollection the order about which you have been talking occurred in the summer of——

Mr. Faulkner: I would ask counsel to identify more clearly the matter we are talking about. If it is the matter in which he overheard a conversation——

Mr. Hippeli: The testimony this morning was directed [336] to the conversation after receipt of a particular order and what happened in connection with that particular conversation and the fulfilling of that particular order. This morning we had the cases of eggs on this particular occasion going into the candling room. We had them before the candler. I am trying to bring them out from the candler and trace them further from there.

The Court: Proceed.

Q. On the occasion about which you are speaking, Mr. Pineda, and directing your attention to

(Testimony of Henry Lester Pineda.)

the candling room and to the three cases of eggs before the candler, there were three cases of eggs before the candler, were there not? A. Yes.

Q. What was the middle case?

A. The middle case was the case that she was supposed to candle.

Q. Was that the case that had been received from the lot on the floor? A. Yes.

Q. Was that the case that was pushed in to her?

A. That was the case I placed outside and she pulled it in.

Q. To her right there was another case?

A. Yes. That was the case where the Grade A egg is supposed to be placed.

Q. What eggs were supposed to be placed on the left-hand case?

A. Anything lower than Grade A.

Q. Those were the cut-outs you referred to?

A. Yes.

Q. When the case on her right-hand side was supposed to be filled with Grade A, was filled, what happened to that case? [337]

A. That case was pushed out.

Q. To whom?

A. The girl on the candle would push it out to me.

Q. Who would receive the case to be pushed out by the girl, Mr. Menges——

A. Well, if there were eight lights working that day he would take four and I would have four. I usually would take the slower girls. I was not as fast as he was.

(Testimony of Henry Lester Pineda.)

Q. When you received the eggs the girls would push out to you what would you do?

A. If it was Grade A case——

Mr. Faulkner: The question is, the case on the right. That witness said if was supposed to be Grade A. The question is what would he do with it. The witness said if it is a Grade——

Mr. Hippeli: I think he is talking about the girl on my right. I was talking about the girl's right.

A. They would be a Grade A case.

Q. The girl pushed out the case on her right-hand side to you?

A. Yes. That case, I would top it and put a mark on it to signify it would be a sample case.

Q. What kind of mark?

A. This case I would put a circle around the nail. An egg case has a cleat on its side to lift it up. It is not like a fruit case where it is flat. You have a cleat. The cleat is held in place by a certain amount of nails. I would put a circle around one of the nails in the corner signifying a sample case, put a full cover [338] on it and put it on a tray.

Q. Did you observe whether Mr. Menges placed any mark on the cases which he received?

A. Yes. The two of us would have to talk it over to make sure we knew what we were doing.

Q. What do you mean?

A. What kind of mark we were going to use, what kind of cover to put on the order and where we would place them.

Q. After you received that case, then, and you

(Testimony of Henry Lester Pinedo.)

put a mark on it, a mark around the cleat, do you label it?

A. If there wasn't a Nye & Nissen case we would label it.

Q. Where would you put it?

A. The label will be on each side of the case.

Q. On the sides or the ends?

A. On each end.

Q. What type of label would you place on the ends of this particular order?

A. This order would be a blue label.

Q. What would it contain?

A. Well, it would be a Biddy hen sitting down on some eggs, on a nest there, with a sort of circle around her and "Nye & Nissen" would be on there, and "30 dozen."

Q. What was the blue label for?

A. To signify the large eggs.

Q. Did you observe Mr. Meiges place a label on the cases he received from the candling room?

A. Yes. He would mark four and I would get four—generally his girls would work faster, and I would help him and he would help me.

Q. After the girl proceeded to push a case out from her right- [339] hand side, would you agree to mark them in the manner there indicated?

A. Yes.

Q. The same with Mr. Nix? A. Yes.

Q. After you received that case that the girl pushed out from her right, where would you stack it?

(Testimony of Henry Lester Pineda.)

A. We placed it in one tray, a flat or a skid, whatever you want to call it. We put all our candled eggs there.

Q. Where was the flat located?

A. It would be in between us, four lights here and my four lights.

Q. It would be in a passageway between the candling room and the breaking room or cut-out room? A. Yes.

Q. Now, directing your attention to the case of eggs that the candler has on her left-hand side, into which you testified she placed the cut-outs——

A. Yes.

Q. When a candler pushes the case of eggs out to you, how would you know they were cut-outs?

A. They would be coming out this side here and once in a while they have a little card signifying "cut-out". We would make sure to get the card off and put it back on the case that was going in, so there wouldn't be a card left on the case when we nailed it up.

Q. What would you do with that?

A. We nailed it down. Instead of putting a full cover on it we put it in two halves. A full cover would be one piece of wood. We just covered the whole length and width of the case.

Q. A full cover would be one board?

A. Yes. [340]

Q. What would be the split cover?

A. The split cover would be two halves. It covered the case the same way as the full cover.

Q. You spoke about an identifying mark that

(Testimony of Henry Lester Pineda.)

you put on the case that was supposed to be Grade A. Was there a similar identifying mark placed on the case of the cut-outs? A. No.

Q. Did you observe whether or not Mr. Menges placed a similar mark on the case of cut-outs as he placed on the cases of Grade A?

A. No. He would do the same as I did.

Q. After you received this case of cut-outs and topped it what would you do?

A. I would have a tray in the middle of the four lights where I was working, and he would have one there, and he would put all his cut-outs on that and I would put my cut-outs on my tray; and we would keep the middle tray there for the sample cases.

Q. The tray upon which you placed the cut-outs was separate from the tray upon which you placed the other eggs? A. Yes.

Q. During this process of receiving those two types of eggs and placing them on the trays, was Goddard ever present?

A. He would come down about three or four times when I was working there and talked to me, tell me to make sure not to get them mixed up and get the marks on them.

Q. Would the whole lot of eggs that were placed out on the floor that was being candled, would that be candled in a similar manner?

A. Yes, the whole lot would have a certain [341] amount of cases that would go in to be candled.

Q. Would each case in that lot as it came out of the candling room be indicated as to whether a cut-out or Grade A, large egg or— A. Yes.

(Testimony of Henry Lester Pineda.)

Q. And by Mr. Menges? A. Yes.

Q. After the two classes of trays of eggs would accumulate in the passageway between the candling room and the butter room and you would take them back there, how many cases would you have of each?

A. The cut-outs we put 24. A full tray would be 30, but we put 24 on cut-outs.

Q. How many cases of eggs would you put——

A. On the other we put 30.

Q. When you had a tray of 24 cases of cut-outs ready what would you do with it?

A. We would pull it out say 10 feet from the end of the candling room and Ruby Goddard would take it and line it up to the other part of the floor.

Q. What would be done with the tray remaining with 24 cases of cut-outs?

A. That is the same——

Mr. Faulkner: We object to the form of the question, what would be done.

Mr. Hippeli: Q. What was done?

A. The same thing as we did with the cut-outs we do with the samples. We pull them out and he would take them away and put them in line. When I was slowed down I would help him top off the cases.

Q. As I recall, you would have two separate lots returned to [342] the main warehouse, one lot would have your cut-outs and another lot——

Mr. Faulkner: We object.

Mr. Hippeli: One lot did have the cut-outs and another lot did have what you call sample cases.

(Testimony of Henry Lester Pineda.)

A. Well, they were all placed on the floor, all the samples in one lot and all the cut-outs in another. We then pulled them out about ten feet from where we were working and from then Ruby and Jimmie Nix would take the samples off, say down to 24 and they would fill it up with six samples and they would take them and put them where they wanted them.

Q. Did Mr. Menges help you in topping cases?

A. Yes, but we didn't do it all day long. When we would get a little below we would go to helping Nix and Goddard.

Q. During the various stages of the procedure was Mr. Moncharsh present?

A. Yes, he would come down, like I say, he usually up around ten or eleven o'clock in the morning and sure to come down about four o'clock in the afternoon.

Mr. Faulkner: Usually, he showed up——

The Court: Did he?

A. He did. He did that day.

Mr. Hippeli: Q. Did he on this particular day you are talking about? A. Yes.

Q. Did you observe him—was he immediately present when you and Mr. Menges were receiving the cases of eggs from the candlers and placing them, the covers on those eggs?

A. Yes. [313] Any time we got a specific order, every time we got an order like that he would come down and find out if there was a mark—we needed a certain amount of samples, and to find out, if the girls were keeping to the percentage of samples.

(Testimony of Henry Lester Pineda.)

Q. Did he go down in the preparation of this particular order to check? A. Yes.

Q. Did he come down to the main floor of the warehouse when you were topping the trays of cut-outs?

A. Yes, because by that time around then we quit about three o'clock and put up what we call city orders, that would be orders that go around the city, different boys would sell around the city, and by that time Ed or I wouldn't be needed. I would go away and start to help over where Rudy and Jim Nix were, and I would have to top off the cases and put them where they wanted.

Q. Did you hear any conversation by Mr. Moncharsh during the preparation of this particular order in which he referred to the method of keeping samples?

A. What do you mean, "method of keeping"?

Mr. Faulkner: We ask the time, place and persons present be fixed.

Mr. Hippeli: In the manner in which the samples should be placed.

The Witness: No.

Q. Do you recall in the process of candling this particular lot in the candling room what percentage of the eggs candled [344] were cut-outs?

A. I would say more than half, about 60 percent were cut-outs.

Q. After the tray had been placed back on the main floor of the warehouse, what occurred next?

A. Well, when we finished the order, it took

(Testimony of Henry Lester Pineda.)

about two or three days, we didn't work right through the whole eight hours putting up this order, but put up city orders or another order would come in, maybe your would not stop all the girls, but maybe four of them, and start working on the city orders.

Q. Did you and Mr. Menges work on the complete order?

A. Yes, and Jim Nix would come around and help like when it is time to sweep up Jimmie Nix or I would sweep up, we would sprinkle the floor with sawdust and do it every night.

Q. Was the complete order candled in your presence? A. Yes.

Q. After the order was candled and returned to the main floor of the warehouse what was done?

A. When the order was completed we had some stamps, like we first put six cases on each tray of cut-outs on the back tier of it, it would be back on the skid for the different aisles that we had. As we came out further, like the aisle over here, we had enough candles to put more cases so when the inspectors pointed them out they would have more sample cases. Then we took four cases off the samples and ran them up here to the butter room, which is right across from the breaking room.

Q. Indicating the butter room right across from the candling [345] room?

A. Yes. We ran four sample cases in there.

Q. Cases from this lot?

A. Cases from this lot without any tops on them.

(Testimony of Henry Lester Pineda.)

Q. Were sample cases placed anywhere else?

A. Yes. We ran another four, I think, and set six or seven cases right out where, over near Bluxome, there, where they had a sliding door, where we put our garbage at night, where the train stopped there, and we used to unload the cars, we put about seven cases there.

Q. Those cases had special marks placed on them by you or Mr. Menges? A. Yes.

Q. After that was done what occurred next was done in connection with this order?

A. By that time I think it was, I would say, around noon sometime where Ruby Goddard called up the inspectors to come over.

Q. What inspectors?

A. The Army inspectors. He left orders for him, or called him up.

Q. Did you have any conversation with Mr. Goddard concerning the inspectors who were to inspect the order?

A. Well, yes. He said when I see the inspector come in to take him—for me to take care of him. He meant when the inspector pointed out the cases——

Mr. Faulkner: Just a moment.

Mr. Hippeli: Q. What did he say?

A. He told me to take care of the inspector when he came. [346]

Q. Did you have more than one conversation with Mr. Goddard pertaining to the arrival of the inspector?

(Testimony of Henry Lester Pineda.)

A. Well, Mr. Goddard, I guess he is a nervous type, I remember he would repeat the same order to me about four times every day.

Q. Did he give you a more complete explanation than you have given us before, as to what he wanted you to do in connection with that order?

A. This is 1941. I was there seven years then. I didn't need any more explanation. I got it in the beginning.

The Court: Well, what did you do? Tell the jury.

A. Well, when Ruby told me to take care of the inspector he meant when the inspector came down, like Colonel Foster would come in, he had a certain way of calling for the samples, picking out the samples, he would get the brush and stamp—they used a brush and ink of the stamp, he would rub it on the brush, he would stamp the case he wanted to inspect and I was supposed to stay with the Colonel.

Mr. Faulkner: Q. State what you did.

A. I stayed with the Colonel. When he stamped a number of cases Ruby and I would make dumps of four high, pick out the cases, and instead of putting them on the skids put them on the floor four high. I made sure that the first four cases he would get nothing but samples which were actually stamped.

Mr. Faulkner: I object to that. He said he made sure what the Colonel did—will you read the answer? [347]

(Record read.)

(Testimony of Henry Lester Pineda.)

The Witness: I said I made sure the first case he got was a case——

Mr. Faulkner: We object to that testimony, because there is no evidence he made sure of anything like that.

The Court: Just a moment. I will allow the question and answer to stand.

Mr. Faulkner: Exception.

Mr. Hippeli: Proceed.

The Witness: To make it more clear——

Mr. Faulkner: Just a moment.

The Court: Reframe your questions.

Mr. Hippeli: Have you completed your answer?

The Witness: No.

Mr. Hippeli: Complete it.

A. Colonel Foster would come in. He would stamp ten or eleven cases of eggs, or fifteen or sixteen. He might say six samples and I made sure the six samples marked would be taken to him for inspection. Maybe three or four cases were put on the bench in the candling room and every inspector would sample cases which he already had picked out. By that time I would take the four cases out in the butter room and run them outside, outside of his candling light, so he would have the amount of cases that he wanted to inspect. Then I would take the cut-outs and run them into the candling room. [348]

Q. Now, Colonel Foster arrived. A. Yes.

Q. Who met him?

(Testimony of Henry Lester Pineda.)

A. I can't say who met him. I can say that I saw him walking with Ruby Goddard.

Q. Anyone else? A. No.

Q. Did you hear any conversation between Mr. Goddard and Colonel Foster pertaining to the inspection of a particular lot?

A. Yes, when I was helping the Colonel to pick out the cases he started picking out some low cases of eggs, which would mean they were for sample cases. He told them, "Don't make it so hard on the boys"——

Q. You mean the cases on the bottom?

A. On the bottom, which was to be sampled. The Colonel, I guess, started picking some top ones to make it easier.

Q. Do you recall whether anyone else other than yourself removed sample eggs from the breaking room, where that order was, out into the aisle between those two rooms and the candling room?

A. Yes, Ruby and I.

Q. Did Mr. Goddard give any cases to the Colonel which the Colonel had not selected for inspection?

A. Yes, these cases here that we placed in the butter room and outside, the place near Bluxome Street. That was the case Ruby and I gave the Colonel, and the Colonel would put the ink stamp on it, and we had an ink pad, I mean a brush, and we got—all we did was give a little dab with the brush. We did the same to those cases. [349]

Q. Referring to the time when you were stand-

(Testimony of Henry Lester Pineda.)

ing outside of the candling room pushing a case of eggs in to Colonel Foster. Colonel Foster was inside the room?

A. Yes.

Q. When you were in those respective positions is it possible for you to determine the manner in which Colonel Foster is removing eggs from that case?

A. Yes, it is.

Q. Will you explain how?

A. Well, like I say, from the top partition around the side of the case of eggs is a curtain, it is cut in strips, you could push a case in and you can also see what is going on inside, between each piece of curtain. You could see like when the girls work there you can see what they are doing. [350]

Q. Did you observe the manner in which the Colonel was handling cases of eggs even when the entire case was in the candling room?

A. Yes.

Q. Will you tell us from what part of the case the Colonel was selecting the eggs which he candled?

Mr. Faulkner: We object to that on the ground no foundation is laid, from all the witness has said, that he could see the manner in which he candled the eggs, after his description this morning of where the bench was and where the eggs were; how could he see above that bench?

The Court: Q. Did you see him?

A. Yes, well

Q. Just a minute. Did you see him?

A. Yes.

Q. Just tell the Jury what you saw.

(Testimony of Henry Lester Pineda.)

A. You can't see if you are standing up, but when we are supposed to see what we are doing, we lean down at the bench, lean down there, and once in a while if a girl leans out we can make out we are talking to her.

Mr. Hippeli: Q. Did you see what he was doing? A. Yes, I did see.

Q. Did you observe Mr. Goddard looking into the candling room?

A. Yes, he looked in first. In the meantime I would be taking covers off of the cases of eggs for him to inspect and trucking the cases out of the butter room to replace these cases he had picked.

Q. Did you observe whether or not Colonel Foster was selecting eggs to be candled from both halves of the cases?

A. When he [351] pulled the case in through this way, you can only work on 15 dozen at a time, and Colonel Foster was just taking out 15 dozen, looking through about nine of those, just one side of the case, and then he would just put the top on, and pull it out. He didn't work like the girls did, where they would pull a case of eggs in here when they would push one out. They can't push it out this way, so we always had to watch out for him.

Q. Did you ever observe Colonel Foster grading or candling merely one-half of the eggs?

A. Yes.

Q. Do you recall a particular case that Colonel Foster would push back to you?

(Testimony of Henry Lester Pineda.)

A. Yes, we can tell if only one case has been candled because the top—what we call mapes or flats, some people will call them, won't be ruffled. They will be neat.

Q. The flat is the connecting——

A. You place the eggs on top and then put the filler on. All we did was reverse the case, go through the motion, and nail the case of eggs so he could hear us nail the case, and all we did was reverse it and push it in again.

Q. Did you observe Mr. Goddard reversing a case which had been candled by Colonel Foster, reverse that case and push the same case back in again?

A. Yes, Goddard and I went through all of this. If he didn't do it, I would do it. As soon as the Colonel would shove out a case he would go through the motions of nailing it up or shove it to my side and I would do the same. [352]

Q. At that particular time were the other cases of eggs being candled by some of the enlisted men who came with the Colonel?

A. No, the Colonel would be the only man candling. He would be talking to them—what he was talking or explaining to them I wouldn't know, but he would be talking to them. There would be only one man candling.

Q. Do you recall how often the same case of eggs would be candled by the Colonel?

A. On this particular order, as I say, the most would be twice.

(Testimony of Henry Lester Pineda.)

Q. After Colonel Foster had candled the number of cases that he had selected from the lot what would be done with the individual cases as they were—pardon me. What was done with the individual cases as the Colonel would return them to you from the candling room?

A. When he was getting near the end of his inspection we would take out these cutouts that he had picked out and run through the butter room. We would take them out, put them on the floor again, and run these samples back into the butter room and some out to the sport shop on the side. But that time when he was through his inspection we would have all the cases nailed except maybe one or two, the last two he had inspected. We wouldn't have time really to finish those.

Q. Then the few cases which were placed in trays outside the candling room for his inspection, would they remain in the trays outside the candling room?

A. Well, they're still not on trays. [353]

Q. I mean dumps? A. Made dump.

Q. By dump you mean stacked on the floor?

A. Left them there until he came out, and whether he counted them or not I wouldn't know. He probably did, because he came out and I think I remember him counting them.

Q. What were done with these dumps of eggs that were outside the candling room?

A. This order passed and he came out and stamped them.

(Testimony of Henry Lester Pineda.)

Q. Did he stamp the eggs that were in the dump?

A. Yes.

Q. Where was the dump taken then?

A. Then we took them all the way back to this order here, in this aisle where we had placed the order, and asked him if he wanted us to stamp them or would he like to stamp them. We didn't leave much room between the aisles, between each pile of eggs, so we stamped them and that made it easier for us to have him pick samples out that way. So he gave me the stamp and brush and I went through and stamped all the cases.

Q. In the lot out on the main floor?

A. Yes.

Q. Was this done in Mr. Goddard's presence?

A. Yes.

Q. Was Mr. Moncharsh present?

A. No.

Q. Was Mr. Menges present during this operation? A. Yes.

Q. You have testified this morning that he was present when the eggs were brought into the candling room for candling by the employees, is that correct? A. Yes.

Q. Was Mr. Menges present during the army inspection?

A. Yes—[354] like he was present, but he was taking care of the girls out there.

Q. Was Mr. Menges present at the time you and Mr. Goddard were pushing the cases in to Colonel Foster for inspection? A. Yes.

(Testimony of Henry Lester Pinedo.)

Q. Did he assist in this?

A. Yes, he helped us take a couple of covers off and nail a few covers on and helped us straighten out, because when we changed these cases of eggs from the cartons he had picked to inspect and we had put samples in, everything was done quite rapidly, so he helped us.

Q. What stamp was placed on the cases out in the main warehouse? A. Army stamp.

Mr. Faulkner: Q. What?

A. An army stamp.

Mr. Faulkner: Ask him to describe it, please, before you show him any stamp. We object to his recollection being refreshed by any document until he describes it.

Mr. Hippeli: Q. Did you see the army stamp that was placed on cases at that particular time?

A. Yes.

Q. Will you describe it to the Jury, please?

A. Well, an army stamp is——

Q. The one you saw on that day?

A. Yes. It is a stamp shaped like a horseshoe and then it has got a "V.C." at the bottom of this horseshoe, and I believe it has the inspector's initial or code on it, and I believe it has the date. That is as far as I can remember.

Q. I will show you U. S. Exhibit No. 34 and ask you if that is [355] similar to the stamp that you placed on the cases of eggs on this occasion?

A. Well, it isn't exactly alike, not exactly like them. I believe the VC was more or less separated

(Testimony of Henry Lester Pineda.)

on these big numbers here which signify the date, I believe—weren't that large. This stamp is different.

Q. Did the stamp at that time have the inspector's name at the bottom or it or did it have a number down there?

A. Well, I am not so sure of that. I really couldn't tell you. But to me it looked a little larger, I believe, but it is the same type like this horseshoe here, but it didn't have such a wide space down there, and it had the "VC" sort of separate and not so close together. They might have changed it by that time.

Q. After the lot of eggs had been inspected and stamped and returned to the main floor of the warehouse what next happened to it?

A. By that time it was time for us to go home. It was just placed there to be delivered the next day.

Q. Do you recall how it was delivered?

A. Well, I didn't have anything to do with the delivery, but I believe——

Mr. Faulkner: I ask that that go out, your Honor, after "I had nothing to do with the delivery."

Mr. Hippeli: That may go out.

The Court: Proceed.

Mr. Hippeli: Q. Do you recall any conversation by any of the defendants concerning the delivery of that particular lot?

The Court: Answer yes or no. [356]

(Testimony of Henry Lester Pineda.)

A. No.

Mr. Hippeli: Q. You do not?

A. Not that particular lot.

Q. Were you present when that particular lot was taken from the plant? A. Yes.

Q. Do you recall who took it from the plant?

A. Eby, Charlie Eby, I believe.

Q. Who was he?

A. He is a truck driver who took Tommy's place.

Q. Who is Tommy?

A. Tommy was the driver. He was there most of the time I was there.

Q. Do you recall who directed Mr. Eby to take that load from the plant?

A. Mr. Goddard and Jimmy Nix helped Eby to load up the truck.

Q. Do you recall an instance in which you will have received cases of eggs from the candling room containing an indication that they were pees or peewees?

Mr. Faulkner: We object to that is leading and suggestive, your Honor.

Mr. Hippeli: I do not intend to lead him. I am trying to fix a particular time in which I can discuss another subject matter.

Q. You have testified that you received cases of cutouts from the candling room? A. Yes.

Q. Do you recall any occasion on which a case of cutouts was indicated in any other manner than by cutouts?

A. Well, it would all depend on the type of

(Testimony of Henry Lester Pineda.)

eggs that was being candled. [357] Like say for instance——

Mr. Faulkner: His recollection cannot depend on any such thing, your Honor.

The Court: Finish your answer.

Mr. Faulkner: We ask that it go out as not responsive.

The Court: Denied.

Mr. Faulkner: Exception.

The Witness: In the case of mediums being candled, then naturally when the case of cutouts is being pushed out, it will be either marked medium cutout, and if the eggs are too small they will get peewees, and this will be peewee cutout or just plain peewee eggs.

Mr. Hippeli: Q. Will you give us as best you can a particular time on which you received a case of eggs through the candling room bearing an indication that it was peewees?

A. Well, we had it every year.

Q. When did you move from the old plant?

A. We moved in 1942.

Q. Take some time, say, toward the middle of 1942—say in the summer of 1942?

A. The late spring of 1942.

Q. Do you recall an instance then in which you received a case of eggs through the candling room that bore an indication that it was peewees?

A. Yes.

Mr. Faulkner: We ask if this was an incident at which he was present.

(Testimony of Henry Lester Pineda.)

Mr. Hippeli: I am getting into that. I am trying to fix [358] that time for you, Mr. Faulkner.

Q. At that time were any of the defendants present? A. Just the same fellows.

Q. Will you fix the particular time and place some of the defendants, if you can recall, were present?

A. Well, we were inspecting some—there was Ruby Goddard, Jimmie Nix, Menges and I. Mr. Nix, Mr. Menges and I were really what we call floor men. We would work, and whoever was busy would call for one of us to help him.

Mr. Faulkner: This is not in response to any question, your Honor. He is asked to fix a time.

Mr. Hippeli: I asked about the particular persons who were present.

The Witness: In the spring of 1942 we were putting up a case of some mediums for Mr. Moosman to inspect.

Q. Who was present at that time?

A. At that time there was Mr. Menges and I on the bench.

Q. What were you doing?

A. Well, we were putting up——

Mr. Faulkner: We object to this as hearsay, your Honor, as to the defendants.

Mr. Hippeli: He has some defendants there.

Mr. Faulkner: Who are they?

Mr. Hippeli: He said there were——

Q. Who were the defendants who were there at this time?

(Testimony of Henry Lester Pineda.)

A. Mr. Menges and I were outside the candling room. [359]

Q. Was Mr. Goddard there at that time?

A. Mr. Goddard, yes.

Q. Was Mr. Moncharsh there? A. No.

Q. Was Mr. Berman there? A. No.

Q And we have Mr. Goddard.

A. Mr. Goddard and Mr. Menges.

Q. And Mr. Nix? A. Yes.

Q At that particular time do you know the order—do you know the type of purchase order that was being handled by Nye & Nissen candlers?

A It was medium, medium grade 1.

Q. Do you know who had submitted that purchase order?

A. No, I don't—I know what it was——

Mr. Faulkner: Just a minute.

The Court: He says he knows something about it.

The Witness: I know it was going down to Pier 32 because I helped deliver that order.

Mr. Hippeli: Q. Do you know whether that particular order was subsequently inspected by the United States Department of Agriculture inspectors?

A. Well, Mr. Moosman and Mr. Reid—I think his name is Gordon Reid—what are they? I mean I really don't know what kind——

Q. Dr. Mericle testified they were agriculture inspectors. Pardon me, your Honor. Were they sub-

(Testimony of Henry Lester Pineda.)

mitted to a Mr. Reid and a Mr. Moosman for inspection? A. For inspection.

Q. At that time do you recall receiving cases of eggs from the candlers? A. Yes.

Q. And you were working the bench from the outside of the candling [360] room, were you?

A. Yes.

Q. Who else was working the bench from the outside of the candling room?

A. Mr. Menges and at times Mr. Nix.

The Court: The jurors may take a recess for a few minutes until they examine the documents.

(Recess.)

The Court: You may proceed, gentlemen.

Mr. Hippeli: Q. You were testifying, Mr. Pineda, that on this particular occasion you were outside of the candling room and cases of eggs were being pushed out to you. Do you recall them?

Mr. Faulkner: Let him identify the occasion clearly. What time?

Mr. Hippeli: It is the same occasion he is talking about.

The Court: He has talked for two days now. You frame the question so that when you read it tomorrow in the transcript no one will know which occasion you are talking about.

Mr. Hippeli: Q. Do you recall, Mr. Pineda, that in the spring of 1942 you were receiving eggs from the candling room at Nye & Nissen's plant in the presence of Mr. Goddard, Menges and Nix, is that correct? A. Yes.